

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: APPLICATION OF PETER) No. CV-09-80020-MISC-DLJ
DAMIEN MARANO FOR ORDER TO)
TAKE DISCOVERY PURSUANT TO)
28 U.S.C. § 1782) **ORDER**

On February 12, 2009, Peter Damien Marano ("Marano") filed an application to take discovery pursuant to 28 U.S.C. § 1782. On February 20, 2009, Frances F. Bowes ("Bowes") filed a letter brief in opposition. Having considered the papers submitted and the applicable law, the Court hereby DENIES the application.

I. BACKGROUND

A. Factual Background and Procedural History

Marano is a party in a divorce proceeding in London, England. According to Marano, the divorce case is pending before the Family Division of the High Court of England and Wales, Elena Bowes Marano v. Peter Damien Marano, Case No. FD07 DO 1333.

In support of his application to take discovery, Marano has submitted a declaration by Claire Anne Blakemore ("Blakemore"). Blakemore is a solicitor of the Supreme Court of England and Wales who represents Marano in the British divorce proceeding. According to Blakemore, as part of the foreign divorce case, Marano's wife, Elena Bowes Marano ("Elena"), has filed a claim against Marano for "financial relief." In the "last quarter of 2008," Marano filed a

1 "cross-application for financial relief" against Elena.

2 Blakemore alleges that Elena holds extensive interests in
3 trust funds located in the United States. Blakemore claims that
4 the "key documents required for the proper determination of the
5 issues between Elena and [Marano] are held by third parties in
6 America." Blakemore contends that it is necessary for Marano to
7 obtain copies of certain documents related to the alleged trust
8 funds "in order that the English Court has the information it needs
9 to determine [Marano's] cross-application for financial relief."

11 Marano has attempted, with no apparent success, to informally
12 obtain copies of these financial records from third parties in the
13 United States. On February 12, 2009, Marano filed the instant
14 application requesting authorization to conduct discovery pursuant
15 to 28 U.S.C. § 1782. Specifically, Marano seeks an order
16 authorizing him to issue subpoenas to seven different people
17 allegedly in possession of information regarding Elena's interests
18 in the trust funds.

20 Marano's application does not provide any background
21 information regarding the identities of the proposed subpoena
22 recipients or the nature of their relationships to Elena. Bowes
23 indicates in her letter brief that she is Elena's mother. Bowes
24 also states that the seven proposed subpoena recipients are Bowes's
25 other daughters, her current and former attorneys, her financial
26 advisors, and others.

1 Marano has attached to each proposed subpoena an exhibit
2 entitled "Exhibit A". Exhibit A lists the documents which Marano
3 seeks from each proposed subpoena recipient. Exhibit A demands the
4 same documents from every proposed recipient. According to Exhibit
5 A, Marano requests the production of forty-seven different sets of
6 documents related to five different trust funds. The trust funds
7 are named the Family Trust, the Survivor's Trust, the
8 Administration Trust, the QTIP Trust, and the Residence Trust. In
9 addition to the production of documents, Exhibit A requests that
10 the producing party re-calculate prior appraisals of certain trust
11 fund assets in order to reflect their current fair market value.
12

13 Blakemore declares that the divorce proceeding in England is
14 scheduled for trial beginning on March 9, 2009. In order to
15 provide his attorneys with adequate time to prepare, Marano
16 requests that this Court order any parties subpoenaed pursuant to §
17 1782 to respond by the earliest of February 25, 2009 or ten days
18 after the Court's order.
19

20 **B. Legal Standard**

21 28 U.S.C. § 1782(a) provides, in pertinent part:
22

23 The district court of the district in which a
24 person resides or is found may order him to give
25 his testimony or statement or to produce a
26 document or other thing for use in a proceeding
27 in a foreign or international tribunal, including
28 criminal investigations conducted before formal
accusation. The order may be made pursuant to a
letter rogatory issued, or request made, by a
foreign or international tribunal or upon the
application of any interested person and may

1 direct that the testimony or statement be given,
2 or the document or other thing be produced,
before a person appointed by the court.

3 A litigant in a foreign action qualifies as an "interested person"
4 under § 1782. See Intel Corp. v. Advanced Micro Devices, Inc., 542
5 U.S. 241, 256 (2004). In order to apply for discovery pursuant to
6 § 1782, a formal proceeding in the foreign jurisdiction need not be
7 currently pending, or even imminent. Id. at 258-59. Instead, all
8 that is necessary is that a "dispositive ruling" by the foreign
9 adjudicative body is "within reasonable contemplation." Id. at 259
10 (holding that discovery was proper under § 1782 even though the
11 applicant's complaint against the opposing party was only in the
12 investigative stage). An ex parte application is an acceptable
13 method for seeking discovery pursuant to § 1782. See In re Letters
14 Rogatory from Tokyo Dist., Tokyo, Japan, 539 F.2d 1216, 1219 (9th
15 Cir. 1976) (holding that the subpoenaed parties may raise
16 objections and exercise their due process rights by bringing
17 motions to quash the subpoenas).

18 A district court has wide discretion to grant discovery under
19 § 1782. Intel, 542 U.S. at 260-61. In exercising its discretion,
20 a district court should consider the following factors:
21

22 (1) whether the person from whom discovery is sought is a
23 participant in the foreign proceeding;

24 (2) the nature of the foreign tribunal, the character of the
25 proceedings underway abroad, and the receptivity of the foreign
26
27
28

1 government or the court or agency abroad to U.S. federal court
2 judicial assistance;

3 (3) whether the request conceals an attempt to circumvent
4 foreign proof-gathering restrictions or other policies of a foreign
5 country or the United States; and
6

7 (4) whether the request is unduly intrusive or burdensome.

8 See Id. at 264-65.

9 II. DISCUSSION

10 A. Basic Statutory Requirements

11 Marano's application satisfies the minimum requirements of §
12 1782. For one, all of Marano's proposed subpoena recipients are
13 located in either San Francisco or Sonoma, California.¹ Because
14 these cities are located in the Northern District of California,
15 this Court has jurisdiction over the proposed recipients. 28
16 U.S.C. § 1782(a).
17

18 Second, Blakemore has declared that Marano is a party to the
19 British divorce proceeding. As a litigant, Marano is an
20 "interested person" for the purposes of § 1782. See Intel, 542
21 U.S. at 256.
22

23
24 ¹ One of Marano's proposed subpoenas is addressed to Diana
25 Bowes ("Diana"), 100 Imperial Avenue, Westpoint, Connecticut,
26 06880. Because Connecticut is not located in the Northern District
27 of California, the Court lacks jurisdiction over Diana. Diana is
28 not listed, however, as a proposed subpoena recipient in the body
of Marano's application. Accordingly, it appears that Marano
attached this proposed subpoena to his application in error. The
Court will disregard the subpoena addressed to Diana.

1 Third, Blakemore has declared that the foreign proceeding is
2 scheduled for trial beginning on March 9, 2009. Although Marano's
3 application does not append any formal documentation verifying the
4 existence of the divorce proceeding, the information contained in
5 Blakemore's declaration appears to satisfy the Intel requirement
6 that a "dispositive ruling" by the foreign adjudicative body is
7 "within reasonable contemplation." Id. at 259.

8
9 Last, the instant ex parte application is an accepted method
10 of requesting discovery under § 1782. In re Letters Rogatory, 539
11 F.2d at 1219.

12 **B. Exercise of the Court's Discretion**

13 Marano has failed, however, to persuade the Court to exercise
14 its discretion to authorize the requested discovery. In
15 particular, the third and fourth Intel factors weigh heavily
16 against granting Marano's application.

17
18 **1. Imposition of an Undue Burden**

19 First, Marano has not demonstrated that the burdensome
20 discovery request contained in Exhibit A is relevant to the British
21 divorce proceeding, or that the request is sufficiently narrowly
22 tailored to minimize any imposition on the proposed subpoena
23 recipients. Even assuming that the divorce proceeding exists --
24 which Blakemore's declaration does not conclusively establish --
25 Marano has made no showing regarding what a "cross-application for
26 financial relief" is, or why all forty-seven items listed in
27
28

1 Exhibit A are necessary to succeed on his cross-application.

2 Rather, Marano leaves it to the Court to speculate as to what legal
3 effect the requested documents will have in a divorce proceeding
4 conducted pursuant to British law.

5 In addition, the document requests contained in Exhibit A are
6 overly broad and unduly burdensome. Exhibit A demands forty-seven
7 different sets of documents related to five different trust funds.
8 In addition to the production of documents, Marano also requests
9 that the subpoena recipients perform calculations regarding the
10 current market value of the assets of the trust funds. Marano has
11 made no showing, however, as to who the proposed recipients are;
12 why he believes they possess the desired information; or why it is
13 necessary to issue seven identical subpoenas containing such
14 extensive document production requests.

15 Marano's proposed time line is also unduly burdensome. Bowes
16 has indicated that some of the proposed subpoena recipients are
17 attorneys, some are financial advisors, and some are private
18 individuals. Even assuming that the attorneys and financial
19 advisors who have rendered professional services in connection with
20 the trust funds possess sufficient knowledge and resources to
21 comply with Marano's demands, it is not clear that any subpoena
22 recipient could reasonably be expected to comply with the extensive
23 demands contained in Exhibit A in the short period of time proposed
24 by Marano. The Court also notes that Marano filed his cross-
25
26
27
28

1 application for financial relief against Elena in the "last quarter
2 of 2008," yet he did not seek relief from this Court until February
3 12, 2009, less than one month before his trial date. These
4 circumstances strongly suggest that discovery pursuant to § 1782 is
5 not justified in this case.
6

7 **2. Foreign Discovery Procedures**

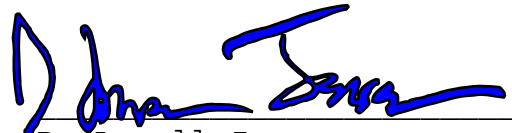
8 Second, although Marano makes the conclusory statement that
9 "there is no basis to conclude that [he] seeks to circumvent
10 British law or that the requested discovery is contrary to the
11 wishes of the British Court," Marano has made no such showing.
12 Marano seeks information regarding Elena's financial resources, yet
13 he moves this Court to authorize the imposition of a significant
14 burden on seven different third parties. Absent any evidence that
15 Elena herself does not possess the desired information, or that any
16 discovery process provided for by the British court system is
17 inadequate to yield the desired information, this Court finds no
18 basis to authorize the issuance of the requested subpoenas.
19

20 **III. CONCLUSION**

21
22 For the foregoing reasons, the Court hereby DENIES the
23 application.

24 IT IS SO ORDERED.

25
26 Dated: February 25, 2009



27 D. Lowell Jensen
28 United States District Judge